

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of:)	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996)	
)	
)	
Commercial Availability of Navigation)	
Devices)	
)	

**COMMENTS OF VERIZON¹ ON
DOWNLOADABLE SECURITY PROPOSAL**

Although Verizon does not believe that Section 629 supports the application of a mandatory “integration ban” to new entrants in the video market, Verizon agrees in principle with the National Cable & Telecommunications Association (“NCTA”) that downloadable conditional access presents distinct advantages over other methods of separating security and non-security functions in leased set-top devices and other devices offered at retail by consumer electronics manufacturers. We are unable to fully evaluate the recent NCTA proposal,² however, because Verizon has no access to the Downloadable Conditional Access System (DCAS) requirements document currently under development. To the extent that the DCAS proposal is crafted to meet cable-centric technological standards – such as the existence of an RF return path³ – the proposal would present a framework that would unfairly and unnecessarily advantage

¹ The Verizon telephone companies (“Verizon”) are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A.

² Report of the National Cable & Telecommunications Association on Two-Way (Interactive) Digital Cable Ready Televisions, *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80 (filed Nov. 30, 2005) (“NCTA Report”).

³ A radio frequency (RF) return path is a feature of legacy hybrid fiber-coaxial networks, such as those used by the incumbent cable companies, that permits the transmission of data and signaling

the traditional cable companies over new entrants who use alternative technologies to deliver video services. And this would be true whether or not the integration ban is formally applied to new entrants.

If the Commission were to endorse any such cable-centric downloadable security approach, consumer electronics manufacturers would be encouraged to develop products that would be compatible only with the dominant cable providers' technology and that would likely not permit downloadable security from providers using alternative technical approaches. Meanwhile, the new entrants potentially could be left with no option other than to satisfy the FCC's rule – to the extent it applies to them – through either (1) the costly re-engineering of their networks to permit the use of a cable-centric downloadable security approach or (2) the offering of two, physically separate pieces of equipment to permit decryption and navigation on their video network. Thus, even if the Commission recognizes that the integration ban does not apply to new entrants, they could be disadvantaged in the marketplace if only a cable-centric downloadable security option is developed and included in new consumer electronics equipment. Equipment that fully functions only on incumbent cable networks and that is portable only among incumbent cable networks will create a “barrier to entry” for new video entrants.

1. Downloadable Security is the Preferred Method of Security Separation, but New Entrants Should Not Be Subject to the Requirement

In its *Second Report and Order*,⁴ the Commission declined the requests of many cable operators to “eliminate the requirement that cable operators separate security and non-security

information upstream to the provider. Alternative video-delivery technologies, such as FTTP and satellite, do not have an RF return path and handle upstream transmissions and signaling using other technological approaches.

⁴ Second Report and Order, *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794 (2005) (“*Second Report and Order*”).

functions in the devices they provide on a leased or sale basis.” *Second Report and Order*, ¶¶ 2 & 27. In doing so, the Commission concluded that “competition in the navigation device market has not progressed to the point of supporting an elimination of the integration ban” and “reaffirm[ed] [its] earlier decision that the integration ban properly balances Section 629’s mandate to promote a commercial market for navigation devices with the practical necessity of allowing the market time to develop.” *Id.* ¶ 27. Whatever the validity of those conclusions with respect to the incumbent cable companies, they do not apply to new entrants into the video market like Verizon who lack any market power over any video services or associated equipment. New entrants into a market who start with a zero market share and face ubiquitous competition from both incumbent cable providers and satellite providers lack the market power to dictate the consumer market for navigation equipment. Therefore, because regulation on a new entrant could not further the purposes of Section 629, the Commission should not deny such providers the opportunity to innovate and differentiate themselves in any possible way, including through the use of innovative equipment that may or may not continue to integrate security and non-security functions. New entrants are simply not in a position to impede the creation of a more competitive market for navigation devices, and the Commission should avoid placing unnecessary restrictions on them that limit the way that new entrants provide their services, including the types of navigation devices that they may use. Given their position in the market, imposing requirements like the integration ban on new entrants will do nothing to further the goals of Section 629.

To the extent that cable operators are required at some point in the future to separate the security and non-security functions of set-top boxes, however, Verizon agrees in principle with NCTA that the downloadable security approach is preferable to requiring the use of two separate

pieces of equipment for security and navigation.⁵ As the Commission itself recognized, a properly formulated, competitively neutral approach to downloadable security would provide all of the benefits of a physical separation requirement, “but would not require the potentially costly complete separation of the physical security element.” *Id.* ¶ 31. Therefore, Verizon supports the concept of permitting a downloadable security alternative to requiring physical separation of security and non-security functions for navigation devices.

2. NCTA’s Proposed Downloadable Security Option May Unfairly and Unnecessarily Benefit Traditional Cable Companies.

While downloadable security is a preferable and more efficient method of satisfying the Commission’s integration ban, the specific proposal being developed by CableLabs may not provide an acceptable approach. To the extent that DCAS is designed by CableLabs specifically to suit cable-centric technological standards used by the incumbent cable companies, Verizon is concerned that the proposal would be incompatible with video providers who do not employ the same technological architecture as the incumbents. Without access to the specific DCAS requirements document that is being developed, Verizon cannot adequately assess that risk.⁶ The Commission should not, however, support any approach that would unnecessarily favor and benefit the most dominant players in the video market, the incumbent cable companies, at the expense of new entrants using alternative technological approaches.

⁵ This is not to say that a provider should be denied the option of satisfying the integration ban through physical separation of navigation and security functions if the provider decides that to be the more efficient or other preferable option.

⁶ To have access to the DCAS requirements document as it is being developed, Verizon would be required to sign CableLab’s access agreement that would commit us to abide by CableLab’s policies and be subject to their licensing agreements. See Letter from Jim Morgan, Sony, to Marlene H. Dortch, FCC, CS Docket No. 97-80 (filed Jan. 5, 2006) (“*Sony Jan. 5, 2006 ex parte*”). Verizon is not willing to, nor should it be required to, engage in that process without any assurance that CableLabs’ DCAS approach could work for us or that Verizon’s participation could affect the outcome of the process.

As Verizon has explained in the past,⁷ CableLabs is not a neutral, standards-setting body – it is an entity that lacks independence from the traditional cable television industry by and for whom it was created. If the Commission has any doubt concerning the neutrality of CableLabs or the process up to this point of developing DCAS, Sony’s Jan. 5, 2006 *ex parte* should dispel it. Sony explained that it was forced, over protest, to sign an “OpenCable Contribution Agreement” just to get in the door of the “CEA-NCTA technical working group,” and “was told that it would be excluded from the . . . group if it refused to do so.” *Sony Jan. 5, 2006 ex parte* at 2. That agreement – which any party seeking to have a voice in CableLabs’ standards-setting process is forced to sign – essentially pledges the party’s allegiance to CableLabs’ “OpenCable initiative,” and subjects the signatory to CableLabs’ licensing agreements. Sony’s experience shows that the current process is anything but open, even for parties who are not competitors of the traditional cable MSOs. CableLabs and NCTA are far less welcoming of new entrants like Verizon.

In fact, CableLabs’ members have every incentive to frustrate the oncoming competition from Verizon and other providers who are developing innovative methods of delivering video programming that threaten the competitive position of its members. The Commission must ensure that these innovative approaches to delivering video services are not artificially disadvantaged by any rules that the Commission endorses – including those at issue in this proceeding.

If NCTA’s DCAS proposal assumes the existence of an RF return path for interacting with the cable system, that approach would be incompatible with the video networks being deployed by Verizon and other new entrants into the video market that employ a different

⁷ See Verizon Comments, *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 05-255, at 40-42 (filed Sept. 19, 2005).

technological approach.⁸ Similarly, Verizon is concerned that new entrants could be harmed if DCAS depends upon the existence of a central keying facility and a unified key management infrastructure developed by CableLabs. While these are essential aspects of the encryption method that would validate any devices seeking to download protected content and that is fundamental to making any downloadable security approach actually secure, building these facilities around standards that would only work for the incumbent cable operators would severely harm new entrants. A provider desiring to develop its own downloadable security approach without entering into licensing agreements with CableLabs would have no choice but to develop and duplicate this infrastructure on its own – no small task for a new entrant into a market.

Moreover, new entrants could be disadvantaged in the marketplace to the extent that only a cable-centric security option is developed and included in new consumer electronic equipment. If the Commission's rules encourage only a cable-centric downloadable security option to satisfy the integration ban, consumer electronics manufacturers would certainly develop and sell equipment compatible with DCAS standards – given the enormous embedded base of customers by the traditional cable companies, manufacturers would have little choice. And under this approach, that equipment likely would not provide downloadable security functionality that would work for Verizon or other video providers using alternative technologies. This would substantially harm new entrants in at least two ways.

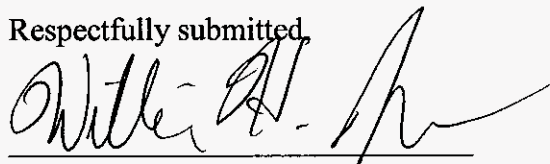
⁸ As Verizon has previously explained to the Commission, similar issues are present in the context of the ongoing two-way plug-and-play proceeding and negotiations. *See* Letter from Paul Brigner, Verizon, to Marlene H. Dortch, FCC, CS Docket No. 97-80 (filed Oct. 20, 2005); PP Docket No. 00-67, *Compatibility Between Cable Systems and Consumer Electronics Equipment*. There too, the adoption of cable-centric standards would greatly harm new entrants into the video market who use new and innovative technology.

First, many consumers who purchase equipment compatible with DCAS would be resistant to sign up for service from a provider who uses an incompatible standard. For example, a purchaser of a high-end television set that incorporates navigation functionalities and permits downloadable security, thus eliminating the need for any external equipment, would be unlikely to switch service to Verizon if that meant giving up on those features and returning to one or more pieces of navigation and security equipment. Second, as the Commission recognized in the *Second Report and Order*, it would increase the costs for customers of providers using alternative technologies if those customers were required to purchase or lease two separate pieces of equipment in order to receive video services—additional costs that would not exist if the customer remained with the incumbent cable provider.

For the reasons explained above, the Commission should encourage the development of a downloadable security option for satisfaction of its integration ban, even while it should also recognize that this ban does not apply to new entrants into the market. However, the Commission should avoid endorsing any approach that further entrenches incumbent cable companies while stacking the deck against new entrants into the video market.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies participating in this filing are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.